

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GARY J. LYON and
JEANNE G. LYON,

Plaintiffs/Counter Defendants,

vs.

CIVIL NO. 08-1114 LFG/DJS

ESTEBAN A. AGUILAR, SR.,
AGUILAR LAW OFFICES, P.C.,
and DOES I-X,

Defendants/Counter Claimants.

ORDER OF DISMISSAL

The Court granted all of Defendants' Motions for Summary Judgment, thus dismissing from this action all of Plaintiffs' claims against Defendants. Defendants also allege a counterclaim against Plaintiffs, asking the Court to award them attorney fees under the New Mexico Unfair Practices Act, N.M.S.A. (1978) § 57-12-10(C), as Plaintiffs allegedly brought an action that is groundless. [Doc. 25, at 19; Doc. 36, at 13].

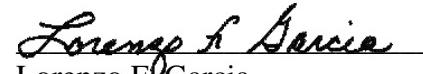
The Plaintiffs' Unfair Practices Act claim was dismissed because their claims against Defendants, other than those covered by a policy of professional liability insurance, were discharged in bankruptcy. However, even if the claims were not dismissed due to the Bankruptcy Court's discharge, the Court does not find Plaintiffs' claims were groundless.

[W]e do not read the statute to authorize an award of attorney's fees to Defendants merely because they successfully prevailed against the claims asserted by Plaintiff. Instead, we conclude that the purpose of Section 57-12-10(C) in authorizing an award of attorney's fees to a defendant where the action is determined to have been "groundless,"

is to reimburse a party for the expense of defending a frivolous action and to dissuade parties from filing actions where there is no arguable basis in law or fact to support the cause of action and the claim is not supported by a good-faith argument for the extension, modification, or reversal of existing law.

G.E.W. Mechanical Contractors, Inc. v. Johnston Co., 115 N.M. 727, 733, 858 P.2d 103, 109 (Ct. App. 1993).

IT IS THEREFORE ORDERED that Plaintiffs' complaint is dismissed. As the Court concludes that Plaintiffs' Unfair Trade Practices claim was not groundless, Defendants' counterclaim against Plaintiffs for attorney fees is also dismissed, and this action is hereby dismissed with prejudice.



Lorenzo F. Garcia
United States Magistrate Judge